

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34728

FRANK WILLIAM HAUSLADEN, JR.,)	2008 Unpublished Opinion No. 654
)	
Plaintiff-Appellant,)	Filed: September 24, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
SHARI COLENE KNOCHE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant,)	BE CITED AS AUTHORITY
)	
and)	
)	
JOHN H. SAHLIN,)	
)	
Judgment Creditor on Appeal-)	
Respondent.)	
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Charles W. Hosack, District Judge; Hon. Barry E. Watson, Magistrate.

Appellate decision of district court affirming magistrate's order for payment of fees, reversed.

F. William Hausladen, Jr., Sandpoint, pro se appellant.

Respondent John H. Sahlin, Coeur d'Alene, did not participate.

LANSING, Judge

Frank William Hausladen, Jr. appeals from the district court's appellate decision affirming the magistrate's order requiring Hausladen to pay parenting coordinator fees billed by John H. Sahlin. We conclude that the magistrate's order was in error, and we therefore reverse the district court's decision.

I.

FACTS AND PROCEDURE

Hausladen and Shari Colene Knoche are the parents of a minor child. Their respective custody rights and child support obligations have been the subject of numerous orders and order modifications over a period of years. Because of the parties' persistent disputes and inability to resolve issues by agreement, on February 2, 2005 the magistrate appointed Sahlin as a parenting coordinator. The order of appointment provided that the fees for Sahlin's services would be split equally between Hausladen and Knoche. In his role as parenting coordinator, Sahlin became involved in attempting to resolve various disagreements of the parents. On January 11, 2006, the magistrate entered an order terminating Sahlin's appointment, largely because of Hausladen's objections that Sahlin was taking actions as parenting coordinator that were unauthorized and/or in derogation of the controlling statute and court rule.

Thereafter, Sahlin filed a motion alleging that Hausladen had failed to pay him for his services and seeking a court order requiring him to do so. Hausladen objected, contending that the order of appointment did not authorize Sahlin to do anything in his role as parenting coordinator and, therefore, Sahlin was not entitled to payment for his "ultra vires" acts. Following a hearing, the magistrate granted Sahlin's motion. The magistrate did not directly address Hausladen's legal arguments but simply ruled that Sahlin had performed services and therefore was entitled to be paid. Accordingly, the magistrate entered a judgment requiring Hausladen to pay Sahlin \$667.50, apparently representing Hausladen's one-half share of the parenting coordinator fees billed.

Hausladen appealed to the district court. The district court affirmed the magistrate in a brief order without a memorandum opinion. Hausladen appeals to this Court.

II.

ANALYSIS

Although Hausladen raises a number of interrelated substantive and procedural claims of error in this appeal, we find his primary claim of error--that Sahlin's services for which he billed were performed without any authority--to be dispositive. Hausladen asserts that under the controlling statute, Idaho Code section 32-717D, a parenting coordinator's duties must be set forth in the order of appointment and that actions taken by a parenting coordinator absent such a court directive are, ipso facto, unauthorized. Because Sahlin acted in this case without such

court authorization, Hausladen asserts, he is not entitled to payment for any services rendered as a parenting coordinator.

This issue is primarily one of statutory interpretation. The interpretation of a statute is a question of law over which this Court exercises free review. *Webb v. Webb*, 143 Idaho 521, 525, 148 P.3d 1267, 1271 (2006). The Court must give every word, clause and sentence effect, if possible. *In re Permit No. 36-7200*, 121 Idaho 819, 823, 828 P.2d 848, 852 (1992). We must also construe a statute to give effect to the intent of the legislature. *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 207, 108 P.3d 349, 354 (2005). In construing a statute, this Court may examine the language used, reasonableness of the proposed interpretations, and the policy behind the statutes. *Webb*, 143 Idaho at 525, 148 P.3d at 1271.

The statute that authorizes appointment of parenting coordinators in child custody cases is Idaho Code section 32-717D(1), which directs:

Provided that a court has entered a judgment or an order establishing child custody in a case, the court may order the appointment of a parenting coordinator *to perform such duties as authorized by the court*, consistent with any controlling judgment or order of a court relating to the child or children of the parties, *and as set forth within the order of appointment*.

The intent of the statute is unambiguous in that it clearly provides that the duties to be undertaken by a parenting coordinator are to be defined in the order of appointment. Idaho Rule of Civil Procedure 16(l), adopted pursuant to I.C. § 32-717D(2), is consistent with the statute. The rule sets out a non-exhaustive list of matters that a court may authorize a parenting coordinator to “determine” and provides that a court may authorize a parenting coordinator to make “recommendations” in other areas, again setting out a non-exhaustive list. I.R.C.P. 16(l)(5)(B), (C).¹ The rule further provides, “The order appointing the Parenting Coordinator”

¹ Rules 16(l)(5)(B) and (C) state:

(B) By way of illustration and not limitation the order may authorize the Parenting Coordinator to determine such matters as:

- i. time, place and manner of pick up and delivery of the children;
- ii. child care arrangements;
- iii. minor alterations in parenting schedule with respect to weeknight, weekend or holiday visitation which do not substantially alter the basic time share allocation;
- iv. participation by significant others and relatives in visitation;
- v. first and last dates for summer visitation;

shall specify the procedure to be followed by the parenting coordinator on the issues submitted to the parenting coordinator. I.R.C.P. 16(l)(8)(A). The rule also states that “[t]he Parenting Coordinator has a duty to define and describe for the parties, in writing, the role of the Parenting Coordinator during the initial conference with the parties” and that this description should include, among other things, “[t]he duties and responsibilities of the Parenting Coordinator and of the parties.” I.R.C.P. 16(l)(7)(A)(4).

Hausladen is correct in asserting that both the statute and the rule contemplate that a parenting coordinator will have only the authority granted by the appointing court. Therefore, a parenting coordinator has no authority to act on any issue or dispute between the parties absent authorization in the order of appointment. In addition, Rule 16(l) mandates safeguards to ensure that both the parenting coordinator and the parties clearly understand the duties and responsibilities of the parenting coordinator before the coordinator acts.

Against this backdrop, the order appointing Sahlin as parenting coordinator stated only:

The Court further determines that it would be in the best interest of [the child] that a parenting coordinator be appointed in this particular matter. Pursuant to Idaho Code 32-717(d), all expenses associated with the parenting coordinator

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- vi. schedule and conditions of telephone communication with the children;
 - vii. manner and methods by which the parties may communicate with each other;
 - viii. approval of out-of-state travel plans; and
 - ix. any other issues submitted for immediate determination by agreement of the parties.

(C) By way of illustration and not limitation the order may authorize the Parenting Coordinator to make recommendations to the court on such matters as:

- i. Which parent may authorize counseling or treatment for a child;
- ii. Which parent may select a school;
- iii. Supervision of visitation;
- iv. submission to a custody evaluation;
- v. Appointment of an attorney or guardian ad litem for a child; and
- vi. Financial matters including child support, health insurance, allocation of dependency exemptions and other tax benefits, liability for particular expenditures for a child.

shall be split equally. Pursuant to agreement, the Court hereby appoints John Sahlin as the parenting coordinator in this particular matter.

At the hearing on Sahlin's motion seeking fees he testified that he reviewed this order prior to taking any actions as parenting coordinator. He acknowledged that the order was "woefully inadequate" with regard to the duties he was authorized to perform. We concur with this assessment, for the order identifies no responsibilities or powers of the parenting coordinator or issues that he would be authorized to address. Sahlin nevertheless undertook to act as parenting coordinator without seeking clarification of his authority from the magistrate. So far as the record reflects, Sahlin never conducted an initial conference with the parties nor described for them in writing his claimed duties and responsibilities as required by I.R.C.P. 16(l)(7)(A). He did, however, issue an "order/recommendation" on various issues raised by Knoche, and billed for his time.

At no time in the proceedings below nor on this appeal has Sahlin presented any legal theory as to why a court should reject Hausladen's challenge to Sahlin's fees. At the hearing before the magistrate on his fee request, Sahlin testified that Hausladen never objected to Sahlin's authority as parenting coordinator until after he had acted, and Sahlin intimated that equity should operate in his favor. He did not, however, identify any legal theory--for instance waiver or estoppel--precluding Hausladen's statute-based challenge to the request for fees, and neither did the magistrate in granting Sahlin's motion. In the appeal to the district court, Sahlin filed a cursory brief that repeated this "equity" argument without expression of a legal theory or citation to authority. The district court's appellate decision similarly does not identify or discuss a legal theory precluding or defeating Hausladen's challenge. Now on the appeal to this Court, Sahlin has elected not to participate; he has filed no respondent's brief. Therefore, this Court has before it no argument from Sahlin as to why Hausladen's challenge to Sahlin's claim of fees should be rejected.

It is not the role of this Court to devise legal theories for Sahlin, and we have before the Court for our review no legal theories articulated by either the magistrate or the district court as to why Hausladen's argument--that Sahlin acted without authority--should be rejected. We were presented only with Hausladen's position, which is well-supported by the governing statutes and rules. In this circumstance, this Court will not search for nor examine legal theories that might support Sahlin's claim for payment.

Idaho Code section 32-717D(4) provides that a court may order that either party pay the “reasonable costs, fees and disbursements of the parenting coordinator.” Because the order of appointment here did not authorize Sahlin to perform any duties, we conclude that the fees charged by Sahlin were not shown to be reasonable as they were not incurred attendant to any prescribed duty. Because of this disposition, we need not address the alternative arguments advanced by Hausladen in this appeal.²

III.

CONCLUSION

The district court’s order affirming the magistrate’s order directing Hausladen to pay Sahlin’s parenting coordinator fees in the amount of \$667.50 is reversed. Costs on appeal to Hausladen.

Chief Judge GUTIERREZ and Judge PERRY **CONCUR.**

² At the hearing on Sahlin’s motion, Hausladen moved to disqualify Judge Watson for cause. Judge Watson denied the motion. Hausladen pursued this issue on appeal to the district court and in this further appeal. Because Judge Watson subsequently entered an order of voluntary disqualification and a new magistrate has been assigned to this case, this issue is moot. In addition, in the request for relief in Hausladen’s appellate brief, he seeks a refund of \$200 that he paid to Sahlin in August of 2005. Because he has not identified where in the record he moved for this affirmative relief before the magistrate court, if in fact he did, his request is denied.